

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Interconnection of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act of 1996)	
)	
Citizens Utility Board Petition for Expedited)	File No. NSD-L-01-161
Permanent Waiver of 47 C.F.R. § 52.19(c)(3)(ii))	
_____)	

**VoiceStream Wireless Corporation
Reply Comments in
Opposition to Citizens Utility Board Petition for Permanent
Waiver of 47 C.F. R. § 52.19**

VoiceStream Wireless Corporation (“VoiceStream”) via these reply comments, joins other CMRS carriers in opposition to the Citizens Utility Board (“CUB”) petition which seeks a permanent waiver of the rule which requires ten-digit dialing for the Illinois NPAs 224 and 847.¹ Specifically, VoiceStream hereby asserts that the CUB Petition in this matter fails to establish the requisite “special circumstances” for a permanent waiver of the ten-digit dialing requirement.² More importantly, the general arguments of the CUB Petition have been rendered moot as the United States Court of Appeal for the Second Circuit has reaffirmed the Federal Communication Commission’s authority to impose, temporarily waive and deny permanent waiver of this dialing pattern requirement.³ Accordingly, the FCC must deny CUB’s Petition for relief.

¹ See Comments Verizon Wireless; AT&T Wireless; Sprint PCS,;and Cellular Telecommunications and Internet Association.

² See 47 C.F.R. § 1.3. It is noted that the FCC denied CUB’s motion to stay its ten-digit dialing rule today, January 4, 2002. *In the Matter of Illinois Citizens Utility Board Motion for Stay of 47 CFR Sect. 52.19©(3)(ii)*, CC Docket No. 96-98, DA 02-7 (rel.Jan. 2, 2002).

³ *People of the State of New York v. F.C.C.*, 267 F.3d 91 (2d. Cir. 2001).

I. DISCUSSION

The Federal Communication Commission's ("FCC") original decision requiring ten-digit dialing among all carriers when an overlay is implemented remains sound and well-reasoned as it provides dialing parity among all types of carriers while ensuring competitive neutrality among relief plans.⁴ The various arguments provided in the CUB Petition fail to provide plausible reasons to deviate from the general rule and lack any sound basis for the imposition of discriminatory dialing patterns against the customers of the CMRS carriers that have entered the Illinois market recently.

It should be noted, for the purposes of these reply comments, that this Commission has only on rare occasions granted *temporary* waivers of the 10-digit dialing requirement. These decisions to temporarily waive this requirement were set to expire on a date certain and were permitted only for significant reasons: (1) overburdened relief activity of carrier networks coupled with consumer education ease in a state⁵ and (2) network implications in the wake of September 11, 2001.⁶ The arguments proffered by the CUB Petition for permanent waiver fail to even meet the significant scenarios provided for the FCC to consider the granting of a temporary waiver.⁷

⁴ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 *et. al*, *Third Order on Reconsideration of Second Report and Order and Memorandum Opinion and Order*, 14 FCC Rcd 17964 (1999) (*Third Reconsideration Order*).

⁵ See *Illinois Commerce Commission Petition for Expedited Temporary Waiver of 47 CFR Sections 52.19(c)(3) (ii)*, DA00-477, NSD File No. L-99-65, Order (2000); and See Letter from Dorothy Attwood, Common Carrier Bureau, to Richard Mathias, Chairman, Illinois Commerce Commission, dated April 6, 2001, DA-01-628 (granting extension of temporary waiver for 9 months until January 7, 2002) (*Illinois Waiver*); and See *Florida Public Service Commission Petition for Expedited Temporary Waiver of 47 C.F.R. Section 52.10(c)(3)(ii)*, Order, CC Docket DA 01-3026 (Dec 28, 2001).

⁶ *New York Department of Public Service petition for Expedited Temporary Waiver of 47 C.F.R. Section 52.19(c)(3) (I)*, Order, CC Docket No. 96-98, NSD File No. L-01-158 (released December 26, 2001) (*New York Order*).

⁷ *Illinois Waiver*, 15 FCC Rcd at 4634, para. 3.

The CUB Petition in support of an unprecedented permanent waiver, in effect, provides arguments with no factual or technical bases for their assertion. Specifically, the waiver of ten-digit dialing in these NPAs would discriminate against VoiceStream customers in the Chicagoland area. VoiceStream customers assigned telephone numbers in the new NPA 224 will be required to dial ten digits and, therefore, subject VoiceStream newest customers to a dialing disparity. .

VoiceStream as a new entrant in the Chicagoland area has often struggled over the past nine months to build and maintain a sufficient inventory of telephone numbers to keep up with customer demand in this growing commercial region.⁸ Stringent conservation mandates in NPA 847, specifically grandfathered utilization thresholds at a rate of 75 percent and only three months to exhaust for a growth code, have limited VoiceStream's timely access to numbering resources in rate centers where customers most want telephone numbers. The CUB Petition generally argues that since there are sufficient numbering resources remaining in NPA 847 due to low carrier utilization and fill rates, that ten-digit dialing requirement should be permanently waived.⁹ Ample access to NPA 847 resources for the purposes of introducing additional competition in this marketplace has not been VoiceStream's experience. The permanent waiver of competitive regulations such as 47 C.F.R. § 52.19(c)(3)(ii) will hinder the benefits of robust competition, much to the detriment of consumers in the Chicagoland market.

II. THE CUB PETITION FAILS TO MEET THE REQUIREMENTS FOR PERMANENT WAIVER OF THE TEN-DIGIT DIALING RULE.

Section 52.19(c)(3)(ii) of the FCC's rules provides that "[n]o area code overlay

⁸ VoiceStream launched initial commercial service in the Chicagoland area during March of 2001.

may be implemented unless there exists, at the time of implementation, mandatory ten-digit dialing for every telephone call within and between all area codes in the geographic area covered by the overlay area code.”¹⁰ The primary intent behind the FCC’s adoption and administration of this rule is “not to hinder competition and to provide needed numbering resources.”¹¹ To date, the FCC has denied all petitions which sought a permanent waiver of this requirement stating, “mandatory 10-digit dialing prevents dialing disparity, and thus eliminates the anti-competitive effects of area code overlays”.¹²

Under Section 1.3 of its rules, the FCC may however consider and grant a waiver of its rules upon a showing of “good cause.”¹³ As noted by the U.S. Court of Appeals for the District of Columbia, Section 1.3 allows the FCC to grant a waiver “if special circumstances warrant a departure from the general rule and that departure serves the public interest.”¹⁴

None of the arguments provided in the CUB Petition reach the requisite level of “special circumstances” that would warrant the granting of a permanent waiver of the ten-digit dialing requirement. As previously noted, VoiceStream needs timely access to sufficient numbering resources. Sufficient time has been elapsed for Chicagoland consumers to adjust to the dialing pattern changes associated with the NPA 847 and the new NPA 224. The Illinois Commerce Commission (“ICC”) has granted two temporary

⁹ See CUB Petition at Page 12-13.

¹⁰ 47 C.F.R. § 52.19(c)(3)(ii).

¹¹ See *Florida Waiver Order* at Page 2.

¹² See *New York Order*

¹³ 47 C.F.R. § 1.3.

waivers to support consumer education initiatives and to ensure geographic uniformity in the affected areas. The FCC's most recent temporary waiver which extended the ten-digit dialing requirement in these two NPAs to January 7, 2002, clearly noted that the FCC believed that by providing an additional extension "more than sufficient time" would be provided for the ICC to educate consumers.¹⁵

The CUB Petition fails to provide any new arguments or information for the FCC to grant this unprecedented request for permanent waiver. In the absence of any "special circumstances," this CUB Petition must be denied.

III. THE FCC HAS AUTHORITY TO REQUIRE TEN-DIGIT DIALING.

The arguments advanced in the CUB Petition have recently been considered and rejected by the Court of Appeals for the Second Circuit, and it upheld the FCC's basis for its decision to maintain ten-digit dialing.¹⁶ The Court of Appeals for the Second Circuit concluded that that FCC possessed the authority to adopt the ten-digit dialing rule and, more importantly, it stated that "the imposition of 10-digit dialing is a valid condition" on the implementation of area code overlays.¹⁷

IV. CONCLUSION

In summary, there are no "special circumstances" provided in the CUB Petition to warrant the FCC's undertaking the unprecedented action of permanently waiving the sound reasoning of 47 C.F.R. §52.19. For the foregoing reasons, VoiceStream respectfully requests that the FCC deny all open issues in the CUB Petition.

¹⁴ See *Northeast Cellular Telephone Co., L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)); see also *Industrial Broadcasting, Co. v. FCC*, 437 F.2d 680, 683 (D.C. Cir. 1970).

¹⁵ See *Illinois Waiver* at 2.

¹⁶ *People of the State of New York v. F.C.C.*, 267 F.3d 91 (2d. Cir. 2001).

Respectfully submitted,

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¹⁷ Id at 107.